

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NOS. 2002-48-C and 2002-224-C - ORDER NO. 2002-870

DECEMBER 30, 2002

IN RE:	Application of Legent Communications Corp.	)	
	d/b/a Long Distance America for a Certificate	)	
	of Public Convenience and Necessity to	)	
	Provide Intrastate Resold Interexchange	)	
	Telecommunications Services within the State	)	
	of South Carolina, for Modified Alternative	)	ORDER APPROVING
	Regulation	)	CERTIFICATE FOR
		)	LONG DISTANCE
	and	)	AUTHORITY,
		)	MODIFIED
	Joint Application of Legent Communications	)	ALTERNATIVE
	Corp. d/b/a Long Distance America and CEO	)	REGULATION, AND
	Telecommunications, Inc. Authorizing Legent	)	ASSET TRANSFER
	Communications Corporation d/b/a Long	)	
	Distance America to Acquire Certain Assets	)	
	of CEO Telecommunications, Inc.	)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Legent Communications Corp. d/b/a Long Distance America ("Legent" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. As part of its application, Legent requests that the Commission regulate Legent's long distance business services, including consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by

Order No. 2001-997 in Docket No. 2000-407-C (now known as “modified alternative regulation”). Also before the Commission is the joint application of Legent and CEO Telecommunications, Inc. (“CEO”) authorizing Legent to acquire certain assets of CEO.

The Commission’s Executive Director instructed Legent to publish, one time, prepared Notices of Filing in newspapers of general circulation in the areas affected by the scope of the applications. The purpose of the Notices of Filing was to inform interested parties of Legent’s applications and of the manner and time in which to file the appropriate pleadings for participation in the proceedings. A separate Notice of Filing was issued for each of the two applications. Legent complied with the instructions of the Commission’s Executive Director and provided the Commission with proof of publication for each of the Notices of Filing. No Petitions to Intervene or letter of protests regarding either of Legent’s applications were received by the Commission.

By Commission Order No. 2002-663, dated September 16, 2002, the Commission consolidated the two dockets concerning Legent’s applications for hearing. A hearing was convened on November 6, 2002, at 2:30 p.m. in the Commission’s Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Legent was represented by Bonnie D. Shealy, Esquire. Florence P. Belser, Deputy General Counsel, represented the Commission Staff.

Bryndon Fisher, Controller of Legent, appeared and testified in support of the applications. According to Mr. Fisher, Legent seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services on a statewide basis.

Legent intends to engage in “switchless” resale, and Legent will arrange for the traffic of its subscribers to be routed directly over the networks of Legent’s underlying providers.

According to Mr. Fisher, Legent is a privately-held corporation organized under the laws of the State of California. On December 14, 2002, Legent was issued, by the South Carolina Secretary of State, a Certificate of Authority to transact business in the State of South Carolina.

Mr. Fisher testified that Legent initially proposes to offer streamlined resold “One Plus” interexchange telecommunications services under a competitive, postalized rate. According to Mr. Fisher, Legent proposes to offer intrastate interexchange services to residential and commercial customers throughout South Carolina. Legent expects to purchase switching, transport, and access services from several carriers certified in South Carolina, including Sprint. Mr. Fisher affirmed that Legent would only use carriers properly certified by the Commission for the provision of its services. Legent will be relying on the technical network capabilities of its underlying carriers for all network and transport facilities in the provision of Legent’s interexchange services.

According to Mr. Fisher, Legent has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which authority is sought. Mr. Fisher offered that Legent’s professional staff is qualified to support Legent’s telecommunications services offerings. Legent’s President and CEO has over ten years of telecommunications experience, and Legent’s Operations Manager possesses over sixteen years of telecommunications experience.

With regard to financial qualifications, Legent submitted unaudited financial information as of August 31, 2001, and submitted a late-filed exhibit of updated financial information. See, Hearing Exhibit No. 3. Mr. Fisher testified that currently Legent has assets of near two million dollars and liabilities of roughly forty-five percent of that amount. Mr. Fisher testified that Legent's liabilities to its underlying carriers are incurred upon the rendering of service, thereby allowing Legent to expand its operations into South Carolina with no additional capitalization. Mr. Fisher also testified that Legent has the internal capabilities to handle financial problems and would not need to go to the financial market for an influx of capital.

As to technical qualifications to provide the requested services, Mr. Fisher noted that Legent is certified in twenty-two states. Further, Mr. Fisher described Legent's customer service operations, including trouble reporting procedures, billing procedures; and marketing procedures. In addition, Legent will utilize the technical expertise of its underlying carriers.

Legent indicates a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. Legent requested that all of its long distance business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Legent's intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with

regard to certain “operator assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Mr. Fisher's testimony, Legent seeks a waiver of 26 S.C. Code Regs. 103-610 of the Commission Rules and Regulations. Legent requests a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina. Specifically, Legent seeks to maintain its books and records at its headquarters office in Irvine, California. Mr. Fisher indicated that Legent is aware of and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. Mr. Fisher also testified that Legent requests an exemption from any policy that requires Legent to maintain its books and records in conformance with the Uniform System of Accounts (“USOA”). Mr. Fisher stated that Legent, as a reseller and competitive carrier, does not possess the detailed cost data required by USOA and that Legent maintains its books in accordance with Generally Accepted Accounting Principles (“GAAP”).

According to Mr. Fisher, Legent has never had authority denied in any state where it has applied for authority nor has Legent had authority revoked in any state where it has been granted authority. Additionally, Legent has never been the subject of an investigation nor been fined or sanctioned by a state or federal regulatory body. According to the testimony, Legent has not marketed its services in South Carolina prior

to receiving certification. Finally, Mr. Fisher stated that Legent will abide by the Commission's rules, regulations and Orders upon receiving certification to operate as a telecommunications provider in South Carolina.

With regard to Legent's requested acquisition of assets, Mr. Fisher explained that Legent is acquiring certain assets of CEO. CEO is a non-dominant provider of competitive resold interexchange telecommunications services. CEO is organized under the laws of the State of California and maintains its headquarters in Santa Barbara, California. CEO was granted a Certificate of Public Convenience and Necessity to provide resold intrastate interexchange telecommunications services in South Carolina in Docket No. 96-62 under CEO's former name of LD Services, Inc. The assets which Legent seeks to acquire from CEO include CEO's base of customers and related data, databases, and customer records. No physical assets are being acquired under the transaction. Legent has made the strategic determination to expand Legent's operations through the acquisition of CEO's assets, and the proposed asset acquisition is intended exclusively to enable Legent to provide resold intrastate, interstate, and international interexchange telecommunications services to current CEO subscribers as new Legent customers. Under the proposed acquisition, current CEO subscribers will continue to receive uninterrupted interexchange telecommunications services. Legent does not seek a transfer of CEO's Certificate of Public Convenience and Necessity; the proposed transaction for which authority is sought is exclusively an acquisition and does not involve merger or consolidation. In addition, Mr. Fisher testified that the former CEO customers would continue to be served under their existing CEO rate plans.

Legent provided a copy of the written notice of the proposed transaction which was prepared pursuant to section 64.1120(e) of the rules of the Federal Communications Commission (47 C.F.R. § 64.1120(e)) and which was provided to the CEO subscribers via First Class United States Mail on or about July 7, 2002. The notification informed the subscribers of the pending Legent applications, of the fact that no action was required on the subscriber's part, that no cost would be incurred by the subscriber, and that the subscriber could elect an alternative carrier.

Legent also requests as part of its asset acquisition that the carrier obligations governing verification of a subscriber's change in primary telecommunications carrier under Commission Order No. 95-658, which adopted the federal carrier verification regulation 47 C.F.R. § 64.1100 *et seq.* by reference, be deemed inapplicable. As reasoning for this request Mr. Fisher stated that a primary interexchange carrier change will not occur because the transfer of CEO's assets does not constitute a change in the subscribers' primary carrier, but rather a transfer of service from CEO to Legent as the primary carrier. Further, the subscribers have already received notification of the pending transfer and have been afforded the notice of the transfer from CEO to Legent.

After full consideration of the applicable law, Legent's applications, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Legent is a privately-held corporation duly organized and existing under the laws of the State of California and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. Legent is a provider of interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Legent has the managerial, technical, and financial resources to provide the services as described in its application.

4. The Commission finds that Legent should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.

5. The Commission finds it appropriate for Legent to maintain its books and records using Generally Accepted Accounting Principles (GAAP) rather than the Uniform System of Accounts (USOA) as developed by NARUC.

6. The Commission finds the acquisition of CEO's assets, including customer base, by Legent to be in the public interest.

7. For the exclusive purpose of the asset transfer herein approved, the carrier obligations governing verification of a subscriber's change in primary telecommunications carrier under Order No. 95-658 are inapplicable.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that a Certificate of Public Convenience and Necessity should be, and hereby is, granted to Legent to provide intrastate interLATA



service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the interexchange business service offerings of Legent consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as “modified alternative regulation.”

Under the Commission approved modified alternative regulation, the business service offerings of Legent, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such

calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Legent also.

3. With regard to any residential interexchange service offerings of Legent, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. With regard to residential interexchange service rates, Legent shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. Legent shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed

increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of Legent's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, Legent shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be consistent with the findings of this Order, shall incorporate the changes suggested by the Staff and to which Legent agreed, and shall be consistent South Carolina law, including the Commission's Rules and Regulations.

6. Legent is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Legent's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Legent shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If Legent changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Legent shall comply with the terms of Order No. 93-462, Order Approving

Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Legent shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Legent shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, Legent shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). The two-page form Legent is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses.

11. Legent shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Legent shall provide to the Commission in writing the names of the

authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

Legent shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form Legent is required to use by which to file the authorized utility representative information may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). This form is entitled "Authorized Utility Representative Information." Further, Legent shall promptly notify the Commission in writing if any representatives are replaced.

Legent shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2001).

12. Legent shall conduct its business in compliance with Commission decisions and Orders, both past and future.

13. With regard to Legent's requests for a waiver of the Commission's Rules and Regulations, Legent is hereby granted a waiver of 26 S.C. Code Regs. 103-610. As to Legent's request for a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina, Legent is granted this waiver and may maintain its books and records at its headquarters office in Irvine, California, on the condition that these records be made available for examination by the Commission at reasonable hours if requested by the Commission. Further, Legent may keep its books and records according to Generally Accepted Accounting Principles ("GAAP") rather than according to the Uniform System of Accounts ("USOA"), as requested.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.

15. The acquisition of assets, including the customer base, from CEO as requested by Legent and described in the joint application and the testimony of Mr. Fisher, is approved. Legent shall provide notification to the Commission upon completion of the acquisition and transfer.

16. The carrier obligations governing verification of a subscriber's change in primary telecommunications carrier under Commission Order No. 95-658, which adopted the federal carrier verification regulation 47 C.F.R. § 64.1100 *et seq.* by reference, are deemed inapplicable. The Commission concludes that a primary interexchange carrier change will not occur because the transfer of CEO's assets does not constitute a change in the subscribers' primary carrier, but rather a transfer of service from CEO to Legent as the primary carrier.

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subscriber could elect an alternative carrier. A second notification to the customers will accord subscribers no added protection.

17. Legent is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

18. This Order shall remain in full force and effect until further Order of the Commission.

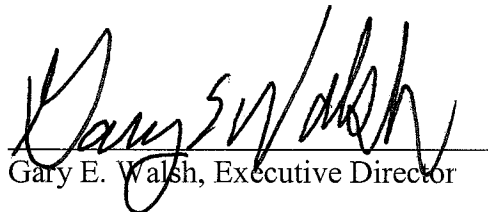
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Gary E. Walsh, Executive Director

(SEAL)